

Data Report

Stakeholder requirements for enabling regulatory arrangements for community housing in Australia

PROVIDER'S DATA REPORT

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INTRODUCTION

These data reports describe the responses from each of the seven stakeholder groups investigated in the project. The first five stakeholder groups are 'external' to community housing and their involvement has been seen as potentially important to the further development of the sector. They are financiers, developers, local government, churches and central agencies.

The remaining two groups are the providers and the administrators – the regulated and the regulators. Both of these two groups have a crucial interest in the outcomes to be achieved by regulatory arrangements. Unlike the external stakeholders, however, their interest is two dimensional. That is, it is an interest in both the new opportunities that might be opened up, and in how it will affect their current core business and achievement of social housing outcomes.

Information from the external stakeholders was gathered using semi-structured interviews. The broad questions, and their relationship to the project aims, are in the appendix to this data report. The informants were chosen because they had sufficient familiarity with the community housing sector to be 'information rich'.

Information from the internal stakeholders was gathered using workshops to identify issues and to get some responses to the external stakeholder views. In addition, four interviews with state based community housing peak bodies were conducted (prior to the workshops) for an assessment of:

- the strategic opportunities being limited by current regulatory arrangements; and
- the strategic opportunities that could be pursued through developments and trends in the local environment.

The informants' views have been presented in each of these data reports in six parts:

- The current context in which the informants are becoming engaged with the sector – or for internal stakeholders, pursuing regulatory reform and sector development.
- What might effective measures within the community housing sector enable or in other words the potential and emerging opportunities.
- The preconditions for realising or achieving these opportunities.
- The aspects of regulation that could help meet these preconditions.
- Principles for effective regulation.
- The informants' assessment of how much difference regulation or regulatory tools or elements might make.

In other words, stakeholders believe there is an opportunity for (and are interested in) achieving some outcomes, but they report a number of preconditions for realising these. This is of interest in itself, but in particular, they suggest ways that some of the preconditions might be met with appropriate regulation. (Table 3 in the main report starts to describe the relationships between the opportunities, preconditions and community housing regulation across the stakeholder groups).

This form of presentation has been adopted to provide an explanatory framework through which to understand the views of the informants. It is intended to help understand how the informants are currently engaged with the community housing system – the drivers and limitations on this involvement; what larger benefits might be enabled if there were some changes in the current system; and what role, if any, regulation might play in this. The overall findings of the research are presented in the findings section of main report.

Providers

Community housing providers across Australia are a diverse group. A handful of organisations manage close to 1,000 dwellings whilst over half manage less than 25 dwellings. There are a range of management structures (most commonly housing associations or housing co-operatives) and organisations involved in the housing

management: non-profit organisations, welfare services, church groups, local government or educational institutions (AIHW NCHF, 1999).

There are also organisations that manage diverse businesses or umbrella structures that service other parts of the sector (for instance, in the area of asset management). As community housing organisations grow – and not all will – there will be changes to the structure and management of the business. The potential to participate in other emerging markets, with affordable housing being the most current, is also likely drive changes in the sector.

The informants

This section presents the findings from the first of the two internal stakeholder groups – providers and administrators¹. These internal stakeholders bring an additional set of interests to the issue of what regulatory arrangements can and should enable. Providers will have a number of objectives for the further development of the sector, and they may hope these will be supported by effective regulation. They may support regulation because they hope to secure the buy-in of others who can support the sector's growth. The engagement of other stakeholders in this way may be important to achieving the providers' mission and business goals.

Providers also have a strong interest in how regulation impacts on their ability to do their immediate business – both in terms of the administrative burden it places on the organisation and on the benefits regulatory systems and information can provide for strategic planning and performance management. Finally, there is a collective interest – one that providers share with government – in the outcomes that community housing delivers to consumers, the housing system and communities.

Unlike for-profits, the rationale for third sector organisations is a community or social good, and the sector collectively has an interest in ensuring that this is achieved.

The other major difference in the discussions with the sector is that they are already operating within a community housing regulatory framework – although perhaps not a very coherent one. And there was considerable focus from providers on the actual processes of current regulatory arrangements or regulatory reform, rather than the in-principle comments that characterised external stakeholders' observations on the role of regulation.

The following discussion of provider views is drawn from two data sources. The first was individual interviews with senior representatives of peak bodies in four jurisdictions – Qld, NSW, SA and WA. These interviews focused on the strategic and sector-wide environment. The second data source was a day long workshop attended by a mix of direct providers and peak representatives. The providers were from a range of organisational types, sizes and locations. However, the spread was not intended to be representative.

The focus of the workshop discussion was on the operation of current regulatory arrangements and the potential to improve the range and effectiveness of the business if this changed.

The current context

Business environment

Policy context - The policy context for community housing remains unclear in almost all jurisdictions. Despite ongoing modest growth (off a very low base),² the roles of community housing in the social housing system have not been clearly or consistently articulated by government. Despite this, informants reported a range of recent initiatives that could lead to a more strategic policy position. In NSW, for example, an Upper House inquiry has explicitly been asked to consider the role of community housing (including the legislative and regulatory arrangements to support this). In WA a community housing strategy is being developed. In SA, a homelessness strategy has been released which places the problem within a broader policy on social exclusion. Vic. has released a major report on social

¹ The outcomes of the administrators' workshop are presented in the Administrators Data Report.

² Stock figures collected by NCHF from SHAs show that in the five years since 1996, community housing units have increased by more than 13,000 across the country – an increase of 76%. While the *rate* of growth is significant, the actual number of units is still relatively modest (NCHF, 1996-2001).

housing innovation and work is proceeding within government to consider aspects of its implementation.

Despite these initiatives, informants expressed some scepticism about the ongoing delays in reaching conclusions or about the chances of an explicit policy direction emerging. For example, one informant commented that, “we are not seeing these things being translated back into existing sorts of structures”.

Regulatory reform initiatives – Informants identified a range of current initiatives to reform the regulatory environment. Informants from NSW, Qld and WA particularly noted these initiatives, although this cannot be taken to suggest that similar initiatives are not also being pursued elsewhere.

- *Legislation* – Following the election of a new state government in WA, the peak body identified an opportunity to minimise the indirect impact of legislation on community housing. For example, amendments to the Residential Tenancies Act provide the peak with an opportunity to make submissions about sections that are a “financial impost” on CHOs. Changes to other legislation, such as planning laws, were seen to open up opportunities in areas such as affordable housing. More broadly, the drafting of a Housing Act carries a commitment from the WA Minister and Department for “more enabling legislation looking at mechanisms to bring different forms of equity into community housing”.
- In NSW and Qld, the legislative reforms to the Housing Acts have been particularly used as opportunities to introduce community housing regulation. In NSW draft legislation was prepared in 2001, without preliminary consultation on the content. Despite strong sector support for using this opportunity to define community housing in the Act – and to enable the introduction of a regulatory framework – it was ultimately withdrawn when the draft was rejected by the sector as seriously flawed. The main weaknesses were a failure to specify the objectives for community housing, while extending government control over aspects of the business in ways that were seen by the sector to undercut the viability of organisations. A NSW informant stressed their disappointment that the legislative opportunity was missed and continue to press for more acceptable legislation. In Qld, there has been an extensive process of consultation over the past year to inform the development of new housing legislation that would enable the introduction of a regulatory framework and to develop that framework. This process is due to be completed in 2003.
- *Quality systems* – Informants noted that the accreditation system in place in NSW and Qld, that assesses services against the National Community Housing Standards, has played a key role in quality improvement both within services and across the sector: the standards have “lifted everybody’s game”. The standards and accreditation system are currently being reviewed nationally, with a key aspect of the review being to locate accreditation within the wider suite of regulatory tools (RPR Consulting, 2002).
- *New building blocks leading to an improved regulatory framework* – One informant described a number of new initiatives in NSW which, despite the failure to implement enabling legislation, have developed a number of new regulatory tools:
 - *New reporting regime under the Community Housing Leasing Program* – Although this measure is program specific and based on funding agreements, the new reporting requirements have greatly improved the ability to identify problems. The new reporting requirements provide information to identify some key financial issues and organisations that are struggling with accounting standards. At the same time, under this reporting regime the administrator is better at understanding the information and providing a response;
 - *Performance management framework (PMF)* – The PMF was developed by the NSW Office of Community Housing using an external consultant and staff seconded from the NSW Federation of Housing Associations. The focus is on clarifying what good performance is, how its monitored and recognising under-performance. In particular it is expected to focus on how such organisations can be assisted – using ‘sticks’ as a last resort. Performance benchmarks are being developed that aim to reflect differing organisational contexts;

- *Best value inspections* – This is an externally developed inspection model focusing on client service practices. It was developed by the Department of Housing for public housing client service teams and has recently been piloted in the community housing sector in NSW;
- *Independent tenants’ appeal process* – The public housing appeals panel for tenants and applicants recently opened up to the voluntary participation of community housing organisations in NSW.

Informants’ assessment of current regulatory reform initiatives – Informant’s assessment of the current initiatives appears to vary significantly depending on the stage that the reform process has reached and local experiences. Perhaps it can be generally characterised by initial optimism³ about opportunities created by reform; however, in all but NSW, this has been eroded by current processes, or (in WA) is seen as premature. The following summarises the range of views:

- One informant reported that the sector was initially committed to the process of regulatory reform, but now thinks implementation is heading for “disaster”. The process was seen to be driven by a political desire to extend control to all aspects of the business. This was viewed as particularly risky given the lack of parliamentary checks and balances;
- The same informant argued that the control – particularly the extensive powers of intervention – seem particularly poorly matched to the risk, since on the evidence of national tenant satisfaction data, community housing performs markedly better than public housing, which in turn can be assumed to perform better than private rental.
- Another informant from SA (the only state where a formal regulatory framework that has been created) found the operations of the framework ‘stifling’.
- Another informant saw opportunities in the reform of external legislation, but considered systematic community housing legislation and regulatory frameworks as premature. The priority is to bed down existing self-regulation, and tidy up current administrative arrangements: “Often regulation is driven from government and I suppose that when it is driven from government I generally have a concern that it hasn’t really got to the nub of some of the issues that exist for the community sector ... they are often for governments to be seen to be doing something.”
- In NSW, an informant reported that the housing associations sector, despite opposition to the form of the earlier proposed legislation, continued to advocate for regulatory and legislative reform as a precondition for further sector development. This view has been reinforced by the opportunities arising from the establishment of an Upper House Inquiry into the role of the sector, a request from the Minister for the NSW Federation of Housing Associations to develop a policy paper taking a proactive view of what comprises effective regulation,⁴ and involvement in developing of a number of new, more effective, regulatory instruments. The more systematic exploration of regulatory elements with a number of other states (Kennedy, 2002) was also seen as positive.

Current limitations

For providers, the limitations inherent in the current regulatory environment were a far more significant focus of the discussion than other stakeholder groups. The capacity to pursue strategic objectives and new forms of business was inevitably a key concern. At the same time, the nature of the relationship – particularly the regulatory relationship – between providers and government administrators dominated the discussion. The limitations are discussed here in four main areas: policy, legislation, administration and funding or finance, including the ability of community housing organisations to access private investment.

³ This observation was not reflected in the comments by a number of SA informants. However, this may be attributed to the considerable time since the introduction of the SACCH Act and the establishment of the regulatory and funding body, SACHA. Anecdotal evidence suggests that in the early stages of regulatory reform in SA the sector saw great potential in the new structures.

⁴ The policy paper has recently been published and distributed widely (NSWFHA, 2002).

Policy and planning limitations - The uncertain policy environment – with community housing policy apparently on the verge of formulation – was noted above. A number of informants also noted some of the more specific brakes on policy and planning:

- *A low priority and hence delays in housing policy formation* – The lowly place of community housing on the public policy agenda “could reduce momentum, and will not inform key events such as the CSHA renegotiation”.⁵
- *No whole-of-government approach* –The lack of clear responsibilities for funding various aspects of housing management undercuts the ability to establish viable financial structures for community housing organisations.
- *Lack of holistic strategic planning* – Where planning exists, it is planning for program administration. However, for sector growth, planning must be more holistic and focused on new areas of activity and the appropriate risk sharing required to enable their development. The limitations of program boundaries are raised again in following sections.

Administrative limitations – including reporting and intervention – The predominant form of regulation for community housing in Australia is administrative: primarily achieved through contracts, service and funding agreements. There was considerable discussion from providers about the difficulties and limitations presented by this environment, however, this should not be taken to mean that all providers were advocating a different regime. But, almost all provider workshop and peak informants were clear that regulatory reform to the extent of improving – or at least tidying up – the current system was desirable. Providers in some jurisdictions, NSW for example, are explicitly advocating for a new, legislative basis for regulation of the sector.

The main areas of administrative difficulty articulated by informants were: ineffective reporting requirements; intervention that is unsupportive and at times excessive; the lack of a clear administrative framework; finding the balance between administrative control and provider autonomy; and the cost of administration. The issues of reporting and intervention generated considerable discussion in the provider workshop, which is summarised below.

Ineffective reporting requirements – An overwhelming concern, reported by all informants was the nature of current reporting requirements. Informants identified a number of dimensions to this problem including: the increasing level of reporting; inconsistency in reporting; government capacity to use reports; a lack of focus on outcomes; and fragmentation leading to a lack of comprehensive regulatory information on the sector and limited organisational capacity to plan for or track accountabilities.

Increasing reporting requirements are starting to create an unmanageable administrative burden, particularly for small organisations. “For co-ops there is a level of compliance that has grown up in the last 20 years... people are asking the question, where is the benefit for the sector when we have to pay exactly the same percentage of income in rent as people in the public housing sector yet we are doing all the work.”

The problem is compounded by the inconsistency between a large number of different program reporting requirements. “One of the issues for community housing providers, and I think it is generic across the country, is the level or requirements of reporting and the inconsistency in the reporting from government. You might get funding from four different sources, they each want reports in different formats, and they each want statistics which are not consistent.”

Once the reports are prepared there was general agreement from the providers at the workshop that the information contained in them was “only as effective as the person on the other end of it. ... Our experience is that it often goes to a junior person and we never get a query or a question”. This was in turn seen to inhibit any kind of risk management function the reports may serve: “I wonder if that within the government authority they don’t really understand some of the financial statements you submit so they don’t really pick anything up earlier on and you are not encouraged to call out.”

⁵ Interviews and workshops were held before the October Housing Ministers meeting at which broad objectives for the CSHA were agreed.

There was a strong and related view that reports are not focussed on outcomes – or the ‘whole picture’ – with one informant expressing the issue such that the reporting tools don’t get to the “true measure of what you are trying to succeed in”.

Informants identified two consequences of the current fragmentation of reporting, driven largely by program based reporting requirements:

- The lack of comprehensive regulatory information is, one informant argued, a major barrier to change. It means that government is unable to oversee and facilitate the full range of community housing activities – particularly new activities. This, it was argued, creates government nervousness, which (as noted above) then leads government to restrict such initiatives.
- Current reporting limits the ability of community housing boards to undertake strategic business planning and track accountabilities. “It is hard for boards to understand the relationship between different requirements. The current approach based on monitoring funding agreements, takes away from boards’ thinking about what they could be doing. The more funding agreements, the more difficult it is for either provider or [government] to manage different accountabilities or track reporting responsibilities.”

Intervention that is unsupportive and inappropriate - The nature of intervention was a significant issue for a number of informants. One was particularly concerned about the excessive nature of the interventions intended as part of the state’s proposed regulatory framework.

We’ve got 80% [tenant satisfaction rating] and we’re travelling in the right direction because satisfaction levels are going up ... What is the justification for having regulatory powers ... that are more interventionist and more directive that we would dream of for either public housing or the private sector where their satisfaction levels are less than ours?

Others were concerned about current approaches to intervention in poorly performing organisations. One argued that an unsupportive approach to problems allows them to become intractable, because providers fear the regulator’s response.

What we are seeing ... is that when problems arise, [CHOs] have no option but to go into denial and wait for the problem to get too big or contact [the regulator] whom they fear can ultimately just come and intervene and end up administering. And, in every instance where this has happened to a housing co-op, that co-op has not survived.

Another described the approach in their state as “passive-aggressive” problem finding. This entailed overstating unsubstantiated reports of problems, while not providing timely or effective action to resolve problems. However, this informant reported that they believed that change was occurring. In particular, they were enthusiastic about the contracting of the peak to intervene to resolve issues, or where necessary, wind up, organisations in difficulty.

The lack of a clear, consistent administrative framework – One informant emphasised the need for a clear administrative framework to provide transparency and consistency. “Some of the problems around at the moment include that it is so discretionary upon project officers and people in the department on whether [for example] that piece of land is suitable for community housing. There is so much discretion involved in it and so much a lack of capacity to actually turn around and say, well this is our right in that framework because there are no rights spelt out in it ...” A clear framework would spell out rights, responsibilities and expectations but this was perceived to be missing.

The balance between administrative control and provider autonomy – This theme of ‘control’ or its converse, ‘autonomy’, is one that dominated much of the discussion with providers. It has already been noted that there is a concern that recent regulatory initiatives have sought to extend control over providers without specifying the consequent benefits to the system and providers. Informants also argued that the current regulatory arrangements undermine

innovation and effective or creative decision-making.⁶ This ‘franchise’ approach was seen to be undermining the specific value provided by non-government service delivery. “There is a bit of a propensity for community housing organisations to be viewed as branch officers of housing commissions and trusts, and from that point of view it has had a negative impact on the innovative side of the sector.” One SA informant said of their regulatory system that is legislatively based, “what regulation at its most negative has done here is to disempower the sector in terms of building up its own skills base and its own capacities”.

Two other informants expressed the view that SHAs are inherently nervous of any initiative that is not directly controlled. One identified this as a barrier to further development of community housing under current regulatory arrangements particularly of “[SHA] nervousness and inability to think strategically beyond public housing. They want innovation, but are concerned that they can’t control it. They never will be able to”. Another suggested that decision makers in their state were “looking to the future with fearful eyes rather than optimistic eyes” which was seen to be colouring the development of new regulatory arrangement in one jurisdiction. “Ultimately that’s about whether the Minister can control all of that [emerging delivery models] and has powers to intervene, rather than where we started from which was how do you create a balanced approach to risk management within a simplified system.”

Providers experienced a number of their dealings with SHAs as politicised and ad hoc. Examples demonstrated how the credibility of the system was also undermined by this perceived interference in providers operations. For instance, one provider reported receiving a directive not to evict in the Christmas holiday period, regardless of legitimate processes. Another informant said that an eviction, proceeding through residential tenancies processes, was halted by the state administrator who requested their own report on the matter. Another said, “some organisations are quite clearly unhappy with the arrangements ... but because they are aware they are so personality based in terms of opinion ... then they will not necessarily bring their criticisms or positive criticisms and they just go along with the regime. That is where it is not very effective”. There was a view expressed by one informant that “you have to keep them smiling on you to function”.

The cost of administration – Two informants expressed concern at the amount of funds being spent on current government administration: “if the regulator is costing a lot of money that means a whole chunk of money belonging to the sector is going into regulation”. Another informant noted the growth in government staffing: “that shows me, like all bureaucracy, it has the capacity to persuade ... the Minister that more staffing is needed to ensure more compliance and accountability; and no analysis is done on whether that’s the right balance of resources, whether you achieve better outcomes by a compliance-based approach or a facilitative, capacity building approach”.

Legislative limitations – A SA informant said of their community housing legislation that it represents a “firmer position in the world” and “protection against political or bureaucratic whims of government”. However sector informants in other jurisdictions identified a number of problems in the legislative environment derived mostly from the fact that community housing is captured by a range of Acts that can be conflicting or poorly drafted.

Conflicts in legislation - Informants noted that community housing currently operates under a raft of existing legislation and regulation – residential tenancy, local government, companies and so on.⁷ Frequently these are inconsistent, or prevent community housing organisations from pursuing emerging aspects of their business. Informant’s examples included an apparent conflict in the WA Local Government Act and the Housing Act regarding whether CHOs should pay rates. In NSW, the Stock and Agents Act would preclude community housing organisations providing housing management services to other organisations – a practice that is currently increasing. Informants noted that the future development of the sector is constrained by these legislative conflicts.

Characteristics of poor legislation – One informant identified the main features of the legislative framework that had proved unacceptable in NSW. While this legislation did not

⁶ This concern parallels the limitations on innovation identified by external stakeholders, such as developers, and the concerns about over-regulation expressed by central agency informants.

⁷ For a detailed list of legislation covering community housing organisations see: Kennedy 2002, Vol.1.

proceed, it is not clear to the informant whether the concerns expressed were fully accepted by the state government. The concerns were that:

- Current reporting limits the ability of community housing boards to undertake strategic business planning and track accountabilities. “It is hard for boards to understand.”
- It only defines community housing as those parts of the business funded by government.
- It does not clearly establish the regulator or specify their role and procedures.
- It seeks to provide control over organisations without enabling their activities.
- It tries to control all aspects of the business without acknowledging the independent role of community housing boards.
- It fails to understand viability requirements, for example, proper surpluses.
- It overrides other relationships such as leasehold agreements.

Funding and financial limitations - Informants identified a number of current barriers to sustained access to private investment to support growth.

- *Political barriers* – One informant noted the political resistance to involvement in alternative financing options for community housing. These included the legacy of financial disasters like the SA State Bank and home ownership schemes in other states, which mean “government is keen to distance itself from any prospect that anything like that would ever happen again”. In addition, “we would have to have Treasury’s advice overridden because Treasury will say look, we know we can borrow money cheaper than the way you are talking about doing it”
- *Lack of detailed modelling* – One informant argued that there was a clear gap between the objective of private financing and a willingness from government to develop and commit to a model to enable this. “They are wanting us to be involved in the development of housing, ... and at the moment what is lacking is that model which has been worked through”. One example the informant used was a model to access individual equity for housing for people with disabilities. In the absence of a model, that equity is not being effectively utilised.
- *Lack of access to equity to lever private funds* – A fundamental problem identified by informants was the lack of access to the equity that (as noted by financial informants in the Financiers Data Report) will be needed to lever in private funds. In SA the Act requires all surplus income to be returned to the funder/regulator: “so what we are saying is that because we can’t retain any equity, ...we can’t get any leverage there to go and borrow funds to expand in our own rights”. At the same time, another informant argued that effective regulation is a necessary (although not sufficient) condition for access to additional resources or assets against which to lever finance

There is no way that government will hand over resources [or transfer title] unless they can control the outcomes. This means more effective regulation and conditions – eg requirement to maintain aggregate stock levels and add a proportion of new stock. No way that they will allow borrowing under current regulation.

- *Public financing pressure on viability – and the impact on tenants* - A number of the limitations identified above by informants are concerned with the marginal financial viability of community housing organisations. Overall, the existing financing structures under the current regulatory regime, was seen to either fail to recognise significant costs (particularly where they are the responsibility of other portfolios) or be based of cost formulas that reduce the capacity to develop reserves or other forms of equity. While this limits the capacity to lever future investment or manage prudently, one informant also noted its impact on tenants. “We have organisations now using the rhetoric of zero-tolerance in terms of rent. What is crucially driving this is that you are operating on such thin lines of finance.”

What might effective measures enable?

Key points:

- The ability to attract resources for sector growth
- Opportunities for new areas of business and relationships with external stakeholders
- New approaches for more viable organisational management
- More effective relationships between government and the sector

Informants identified the range of objectives they had for future sector development. A number of informants stressed that unless additional regulation was introduced with a view to supporting the achievement of these objectives, it would be an inappropriate extension of government control. This is partly reflected in the view that, on the basis of tenant satisfaction evidence, the risks for tenants are lower than most other housing models (and are already regulated through tenancy legislation).

Attracting resources for sector growth

Informants described a number of forms in which such resources might be attracted:

- *Access to equity to lever finance* – Informants looked for the transfer of title, to do “much bigger things” but as one noted this also requires equity to be built up in the assets: “What we are saying is that because we can’t retain any equity... we can’t get any leverage there to go and borrow funds to expand in our own right”.
- *Shared or retail equity* – Another looked to new forms/sources of equity: “What we really need is to bring in, not just private equity from developers or whatever, but also individual equity”. An example of a potential source of individual equity is parents of dependants with disabilities who have expressed willingness to contribute to their housing costs within an appropriate framework.

Opportunities for new areas of business/relationships with external stakeholders

A number of peak bodies and providers were aware of the possible roles community housing could play in the housing system which could lead to new areas of business and partnerships with external stakeholders.

- *Affordable housing* – A number of informants hoped to be able to play a more active role as managers of affordable housing. One informant noted the potential in new planning approaches and in large-scale redevelopment “to enable more affordable housing and greater social mix”.
- *Take up new supply opportunities* – There was interest in the provider workshop in taking up new supply opportunities and offering a range of products to their constituencies. Informants in NSW cited the example of the current registration of community housing providers under the Residential Tenancies Act, which provided two tiers of registration, one of which provides access to long-term private headleasing.
- *Diversification of business* – Informants argued that they would like to see a wider development of the emerging fee-for-service management on behalf of other agencies, or partnerships with developers. They are looking for existing small-scale initiatives to be developed systematically. Another informant saw that the development of intermediaries – or secondary bodies – would be an important step in developing alternative products. One informant also suggested that their organisation would like to explore the possibility of inter-state operations.
- *Innovation* – Like many of the external stakeholders, providers argued that risks should be managed without proscribing approaches to the business in order to ensure that innovation is possible and encouraged. Some particularly warned against regulation that is primarily concerned to prohibit activities or takes a “permission based” approach. “A piece of legislation that enables and doesn’t restrict organisation’s capacity to create more housing and make creative solutions ... so it doesn’t act to prohibit it [community housing] from certain activities which potentially could lead to better housing outcomes.”

More viable organisational management

A number of informants argued for a new approach to improve viability. Some different ways in which viability could be improved were considered.

- *Supporting planning, identification of risk and appropriate intervention* – As noted above, some informants argued that a reporting framework that enabled a focus on the whole of the business would support more strategic business planning by boards and more effective tracking of accountabilities. Similarly, it was argued that a focus on early risk identification, linked to effective support would mean that the business is sustainable.
- *Supporting capacity building* – Another informant stressed that the focus of the system should be to increase organisational capacity – that a rational discussion of risk management would pay as much attention to this aspect as to powers to intervene in the event of failure.
- *Increase the scale of organisations* – One informant suggested that the small size of organisations means “the capacity of any single organisation in the community housing sector to take advantage of what is happening is pretty limited ... either a different kind of approach or fairly serious consolidation [is needed]”.
- *Appreciation of the context in which community housing operates* – Informants argued that a consistent regulatory environment is needed, and the interaction of the existing legislation and regulation should be mapped and made more consistent. “This is increasingly coming through as being the biggest area of need, to identify the current system community housing operates under – and each state operates under different pieces of legislation – and the different ways it interacts.”
- *Continuity of funds* – One informant said that as improved reporting, planning and identification of risk and intervention was achieved that it should provide the basis for more certainty about the continuity of funding for providers. As organisations get larger they do not want to be constrained by the possibility of having for example, only six months of certain funding. “You would like to think that in some future regime that so long as you perform there would be some continuity.”

More effective relationships between government and the sector

One of the main outcomes sought from provider informants was a more appropriate understanding and balance of roles and responsibilities between government and the sector. Again, informants pointed to different dimensions of this relationship that could be improved.

- *Funding outcomes rather than micro managing* – A fundamental concern was the need to understand the autonomy of community management, its mission, and governance. The perception that government “micro-manages” the community housing business is strong and a shift to funding outcomes rather than purchasing outputs or specific business procedures was seen by providers as a key to effectively utilising the added value of community management.
- *Clarification and consolidation of administrative arrangements* – One informant noted the variable nature of the contractual agreements entered into over time. “There is a bit of a lack of consistency there but that requires a whole review of the agreements, and it is a historical problem that there is not really a simple answer to.” Limitations in the administrative arena are a major preoccupation for providers: “the problem with the lack of clarity in a regulatory framework [is that] we are seeing organisations at the whims of bureaucrats without the safeguards to ensure there is consistency”.
- *Industry reform of the community sector* – One informant argued that greater clarity about the identity and infrastructure to support the industry would be desirable, including the consolidation of housing and social service peak bodies: “what you’ve got is six or seven pieces of infrastructure ...”. Related to this, another informant looked to an industry in which there were far better career paths between the community and public sectors: “when you set up a new government system it is quite common to recruit people from the community that has been at the cutting edge”.

- “*Better dialogue*” – finally some informants looked to a future relationship that enabled far better dialogue between the two sides of the partnership.

Preconditions for achieving these opportunities

Key points:

- Clarification of the roles and responsibilities between government and the sector
- An explicit policy context as the basis for future sector development
- Access to equity by providers
- Effective intervention by administrators
- Greater capacity for the sector and government to respond to risk
- A system that builds on sector initiatives (self-regulation and co-regulation)
- Resourcing agencies that are effective partners in co-regulation
- A system that utilises other public sector principles for good regulation
- A regulator that has the ability to effectively implement a system

Unlike external stakeholder groups, provider discussion of preconditions focused on the preconditions for appropriate regulation itself, in part, because of the prominence in some jurisdictions of regulatory reform.⁸ The focus on the preconditions for effective regulation might also be attributed to the apparent dissatisfaction with the experience of current regulation. But it should also be recognised that some informants had taken a more strategic view and argued that the lack of an effective regulatory framework was a fundamental barrier to accessing the opportunities for growth.

Clarification of roles and responsibilities between government and the sector

One of the recurrent themes from providers was the need for a better understanding of the different roles of government and non-government agencies. As noted above, accountabilities associated with current program structures fail to appreciate that providers manage a discrete and diverse business, and that its core responsibilities are to community stakeholders rather than to government. The aspects of the regulation that impinge on how this business is conducted, must recognise this structure if it is to be effective. One large provider said, “If we are seriously going to grow into businesses then we are going to have different income streams and we are going to be complex organisations”. Equally, some informants argued that government must be clear about how its activities impact on the capacity of services to do their job. Informants argued that a whole of government approach and better relations “are precursors to any piece of legislation without it simply becoming another impost on organisations”. Or again, “if you tackle those fundamental issues of how government relates to the community sector as a whole and how it funds it, what its responsibilities are to communities then that is going to assist in the process of regulation”. Informants also perceived the need for greater recognition of the range of relationships community housing organisations are managing: with the administrator, support services, local organisations and so on.

An explicit policy context for community housing

In common with most other stakeholder groups, providers stressed the need for a consistent policy framework as the basis for future sector development and to articulate the outcomes expected from new regulatory arrangements. For one informant, establishing the policy parameters was the priority: “There is no policy framework within which community housing fits, without it regulation is talk, but we need something more fundamental before we get to that discussion”. There were a number of different reasons for a clear ‘framework’:

- *Policy that is related to broader social outcomes* – “It [a regulatory framework] should be framed in association with broader policy and it needs to account back to that social policy.”

⁸ And because of this familiarity, it was possible for the discussions to be more explicitly focussed on the issue of regulation.

- *Explicit objectives which make clear why a community delivery model is being pursued* – “There is no right or wrong about regulation, what is important is to be really clear about your objectives, those objectives ... have to be about enabling the sector to drive as much of its day-to-day and future business as possible.”
- *A clear strategic statement within which regulation fits* – Such a statement would identify key aspects of the relationship: the business opportunities, risk sharing, and the ways in which capacity building would be supported. A number of informants noted that state regulatory judgements or intervention occur in a politicised or ad hoc environment and consistent policy and administrative framework would provide a buffer.
- *To provide a context for legislation* – A number of informants argued that a clear statement of the objectives for the housing system is an essential safeguard for providers before legislation establishing a range of regulatory powers is drafted.⁹ Such a statement of objectives should be part of any legislation.
- *Framework for the range of regulatory measures* – Informants noted that there are a range of ‘tools’ that are part of a regulatory system. A clear articulation of their different (and complementary) function is essential to avoid over regulation and to ensure that the most effective instrument is used. An example given was the need to clarify the relationship between ‘regulation’ and quality systems.

Access to equity

Informants saw the need for access to equity against which to lever the involvement of the private sector – particularly private finance. This is expressed in a number of ways:

- *The ability to increase the organisation’s equity* - through revenue generated from its income stream. In effect this focuses on the capacity to generate surpluses or, in the specific case of South Australia, to repay loans.
- *The transfer of equity* - (in effect, the capacity to use the asset effectively) to community organisations whose assets are currently owned and controlled by government.
- *More flexible charges over the asset* – the capacity to use equity formally held by organisations in the form of title, but effectively constrained by government caveats or charges. There was support in the provider workshop for the concept of a statutory charge on the assets.

Effective intervention - a precondition for legitimacy, viability and growth

While some informants expressed concern that regulatory arrangements could provide powers of intervention that were both disproportionate to the risks and at the expense of a focus on capacity building, others argued that effective intervention is crucial to the credibility of the system and the sustainability of organisations. In effect, both positions place a premium on the quality and effectiveness of the intervention. “What people [CHOs] need is an opportunity for an early response and support system that is confidential and competent with no punitive authority ... At present there is no structured support or tolerance in the system.” One informant went further and argued that both early and constructive intervention *and* clear action to require change are needed. Two important conditions identified by this informant were reporting systems that could genuinely identify problems early and the use of industry bodies to undertake intervention. The informant was strongly supportive of more deliberate action of this kind now being undertaken in their state:

The sector wants intervention. It was angry about a negative backlash from some poor behaviour. [The peak] has written to the Minister commending him for his action. This is typical of many industries in which industry based regulation is developed to protect the industry reputation.

The informant also stressed that the ability to sort out problem organisations is a precondition for growth in the sector – particularly in terms of the political support needed to have access to and control over assets and resources.

⁹ This recognises that in order to provide flexibility and avoid ‘black letter’ regulation, legislation will be very general and principally enable government regulatory action.

Greater capacity for the sector and government to respond to risk

The barriers to effective management and the regulatory burden associated with program based reporting have already been noted. While there was some difference of views, most informants argued that performance reporting – particularly reporting on financial performance – should be against the whole organisational operations if it is to provide any effective risk identification. One workshop participant argued that this was best achieved (and achieved in a way that respected the autonomy of the business) by reporting under companies regulation. Others argued that that an industry specific focus was preferable. Informants in NSW noted that both new program reporting and a new performance management framework currently being piloted provide a far more effective focus on early identification of risk, in the context of the organisation’s specific circumstances, and a better focus on financial issues.¹⁰

Build on sector initiatives – self-regulation and co-regulation

A number of informants referred to the sector’s own initiatives in self-regulation – in particular the development of codes of practice and the administration of complaints procedures under these codes. This led to two important preconditions. The first is that effective regulation is usually led by the industry itself. While the limitations of self-regulation were noted, it was argued that regulation should build on the sector’s initiatives. “The [peak’s] Code of Practice is important because it states [our] position on standards and ethics of the sector. But there are limitations to self-regulation – it is difficult for an industry body to penalise its members, and it doesn’t convince government. It protects the industry’s autonomy, but cuts off options. The Code of Practice was important too because it was a precursor to the sector’s initiative in developing standards and accreditation, and from that, developing an approach to wider regulation.”

Providers at the workshop could also identify the value in a range of the tools that are used in the existing regulatory environment notably operational guidelines, the national standards, financial audits and legislation. For instance, residential tenancies legislation “affords certain rights to our tenants, which we are fierce about, we defend”.

Effective resourcing agencies as partners in co-regulation

To be effective, co-regulation will need to involve resourcing and federating bodies as partners. This means clearly identifying the places in the regulatory framework where the industry plays a role. The use in one jurisdiction of peaks for intervention is an example. Another example is an industry code of practice that, while not resourced by government, is used by them as a basis for making assessments about organisations. Other informants argued that in some instances peaks are “a shadow of our former selves” and need to be well resourced as part of a regulatory framework to achieve a “re-weighting of the ownership and the drive of the sector”.

Utilising other public sector principles for good regulation

One peak body informant stressed the need for administrators, as they develop regulatory approaches, to be aware of and conform to agreed public sector principles for effective regulation. These include principles such as ‘proportionality’ and ‘co-regulation’, both of which were endorsed by providers at the workshop. Examples such as the Qld Department of State Development publication, *Guidelines to Alternatives to Prescriptive Regulation*, were cited.

Ensuring there is a capacity to implement

Finally, a very strong concern – based on the poor history of the administration of current community housing regulation and on observations of other regulators – was that the introduction of new regulation must be accompanied by an ability of the regulator to implement it effectively. A number of different aspects of this theme were reported:

- *Establishing the regulator in legislation* – It was argued that it is not acceptable that current program administrators should be assumed to be regulators, and that the identity and role of the regulator needs to be established in the enabling legislation.

¹⁰ It was noted that reports against the Community Housing Leasing Program now provides the capacity to show where organisations were struggling with the accounting standards and needed further scrutiny and assistance.

- *Monitoring compliance* – a number of informants stressed that the regulator must have the ability to genuinely and comprehensively assess compliance or emerging risks (see discussion of reporting above).
- *Appropriate interventions* – As noted a number of times already, informants argued that the regulator must have the capacity to intervene in a timely way and in an appropriate way – initially in partnership with the industry.
- *Resources for roll out* – One informant said that any community housing legislation and accompanying regulation would have to be properly resourced, particularly if it introduced new elements like regulatory tiering which could be potentially confusing for some organisations. The GST was cited as a piece of resourced legislation but generally an act of parliament was considered a cheap option with long-standing ramifications. “One of the things that government has not been very good at is resourcing legislation. It is very cheap to put legislation in place but there are not the resources put in there to explain it.”
- *Effective information on regulatory status* – Or again: “With something like regulatory tiering I can’t see them putting in a lot of resources to let people know where they stand and I think it would create a lot of confusion”.

What aspects of regulation could help meet these preconditions?

Key points:

- Regulation based on legislation
- Streamlined program based funding agreements
- A new kind of regulator that is independent of current program administration
- Registration of community housing organisations that embodies regulatory tiering
- Some mechanism to provide government assurance about the use of publicly funded assets
- A Performance Management Framework to monitor performance and risk
- Standards and accreditation for quality improvement and quality assurance
- Independent tenant appeal process to ensure outcomes for tenants
- Checks and balances to provide industry confidence in the system

Only some informants described what they saw as the key elements of a regulatory framework. The following reports these elements, but does not attempt to reflect any debate or consensus.¹¹

Based on legislation

One informant said that the policy position of the sector they represent was that legislation must replace contract administration as a basis for regulation. It is also required to provide recognition of community housing as an industry or distinct social housing model. This recognition should be explicit about what is meant by an ‘autonomous sector’. However, it must not limit its scope to specific programs or funding. In particular, it should be able to regulate new aspects or forms of the business as they emerge. Legislation must articulate the broad objectives for the industry, in particular, “what community housing might be doing in the future and the new businesses – for example, affordable housing” and “looking to enabling and promoting innovation”. Legislation is also required to provide a head of powers to fund community housing. Finally, a number of informants stressed that legislation should remove the duplication or contradictions between various areas of regulation or legislation that relate to community housing.

Providers at the workshop also commented that legislation could provide certainty and consistency in their business environment: “Because you have to insulate yourself from political whim when you are running a housing association where you have such long lead

¹¹ Many of these elements were an informant’s account of the position developed by the NSW Federation of Housing Associations in its paper to the Minister (NSWFHA, 2002).

times, maybe legislation could do that". While there was general agreement with this view, a strongly put contrary notion was that it is preferable to be primarily reliant on other legislation, such as the Companies Act, that reinforces the organisation's autonomy and minimises the risk of being "micro-managed". There was also a concern, from the same provider, that the housing legislation is not generally meaningful – "who has read it" – and it is not a priority activity: "What we need is funding, access to capital money to grow this sector and to be able to provide the housing ... legislation is not going to provide the answer to the problems I see".

This was not an argument for the status quo (for instance, the informant agreed that lease agreements need streamlining) however, there was a concern that developing legislation "is not something that happens in a couple of months" and would be a brake on other activities.

Program based funding agreements

It was noted that legislation would not replace the need for "program based regulation through funding agreements". However, it was suggested that program based agreements could be "streamlined through a legislative framework".

Establish a new kind of regulator

The regulator should be independent of current program administration; and its role should be specified in the legislation. One provider cautioned, "it is not the regulation or structure that delivers the result, it's the will, it's the vision, it's the ability to take a risk".

Provide registration of organisations that embodies 'regulatory tiering'

Regulatory tiering enables different levels of risk to be regulated proportionately. One informant stated its importance as follows, "Housing associations expect to be under a different regime to small co-ops. Ultimately the regulatory system will be after the same outcome – to ensure that there are decent outcomes for tenants and that these are provided cost effectively. But this will involve different levels of risk between different organisations. While associations are growing and taking on wider roles they will be taking on more risk. Government should share some of this risk, but must also expect more assurance".

Mechanism to provide government assurance about the use of publicly financed assets

As noted earlier the capacity to manage and utilise assets is seen as crucial to sector development. At the same time, government need assurance about the long-term maintenance of its investment to meet social housing objectives. Some informants argued that the mechanism should move away from a "permission based" system to a criterion based system that focuses its protection on the aggregate pool of assets.

Performance management framework

A clear system to monitor ongoing performance against key indicators and to enable emerging risks to be identified early is another aspect of regulation raised by informants. Key areas might include: vacancy rates, turn around times, arrears, cost structures or governance. Crucially, effective, risk based, performance management systems are the basis for enabling timely intervention.

Standards and accreditation

Accreditation is an important part of quality improvement and quality assurance. Informants suggested that it is tied in to regulation, to the extent that it should influence the decision about the class of registration (in ways that provide additional opportunities), although it should not be a minimum requirement for operation. There was also a view from one provider who has been through the accreditation twice that, once you are in the cycle the standards "assiduously" check the organisation's internal risk management strategies and processes for instance that "the maintenance that you have paid for is being done".

Independent tenant appeal process

It was strongly argued that since the purpose of regulation is to ensure outcomes for tenants, external appeals are a very important part of a regulatory environment.

Checks and balances for the system

A number of informants talked about the need for ownership of the regulatory system by the industry. Some also spoke in some detail about the checks and balances needed to provide industry confidence in the system. These included:

- independent appeals against regulatory decisions;
- an industry panel to oversee and avoid regulatory creep;
- cost cap (or guarantee) to ensure that compliance costs don't increase beyond, for example, 10%;
- representation on the board of the regulator;
- accountability requirements on program administrators; "so that funds that are supposed to flow into the community sector are clearly transparent".

Principles for effective regulation

A number of principles were implicit in the comments of informants. In some cases informants referred explicitly to the need to ensure that accepted best practice public policy principles of regulation inform community housing regulation. Principles that were articulated by providers included:

- enabling public transparency about how the sector performs and is administered
- outcome focused not narrow and detailed input based regulation
- focuses on the whole business; is broader than individual programs
- proportionality
- co-regulatory approach
- recognises the autonomous responsibilities of providers

How much difference would such regulatory elements make?

This assessment had two quite different objects. Providers were very clear that reform to overcome the duplication, inefficiency and regulatory burden of the current system is needed and, if successful, would be particularly valuable.

There was some acceptance (and in some cases strong support for the view) that a greater capacity for government to monitor and respond to real and perceived risks in the sector is a precondition for government to devolve greater responsibility, control and resources to the sector. To the extent that this is a precondition for significant sector development, regulatory frameworks were seen as important. At the same time, some argued that existing external regulation (of companies, residential tenancies, charities and the like) should receive greater recognition by government as a source of assurance. Similarly it was argued that the data on tenant satisfaction with the performance of the sector should already provide strong assurances.

Finally, there was at best mixed acceptance that regulation would assist in creating further opportunities to engage with external stakeholders. However, to the extent that access to equity is required against which to lever such involvement, the support of government to enable this is seen to be vital.

APPENDIX: PROJECT AIMS & CORRESPONDING RESEARCH ELEMENTS

Stakeholder requirements for enabling regulatory arrangements for community housing in Australia (60118)	
Project Aims	Research elements (including interview questions)
To identify the outcomes looked for from a community housing regulatory system by external stakeholders - private financiers, local government, developers, church partners and central agencies	<p><i>External stakeholder interviews</i></p> <ol style="list-style-type: none"> 1. What is your current involvement with community housing or what do you understand about the sector? 2. What opportunities does the community housing sector present? 3. What are the barriers to expanding these opportunities? (<i>prioritise importance</i>) 4. How could these barriers be overcome? (<i>if ways of overcoming the barriers relate to regulation, discuss for more detail on the types of mechanisms that would be useful</i>) 5. If the barriers you have identified could be overcome in the ways we have discussed what would it change in your dealings with the community housing sector? (<i>ie: how would it impact on the risk assessment?</i>) 6. How would these types of changes affect the costs of expanding your opportunities within the community housing sector? <p>(n.b. questions modified for central agencies)</p>
To identify the limitations of current arrangements and the enhanced capacity of community housing providers that might flow from improved regulatory arrangements	<p><i>Peak interviews</i></p> <ol style="list-style-type: none"> 1. What are the new developments in your jurisdiction in relation to regulatory arrangements? Or, what are the emerging trends? 2. What are the strategic directions/opportunities for the sector in your state that might be affected by regulatory arrangements? 3. What are the difficulties or limitations that have arisen from current regulatory arrangements? 4. What are the difficulties or limitations that have been identified with respect to the new developments or emerging trends? 5. What are the strategic opportunities that could be opened up for the sector from new developments or trends, as they are now or if they were modified? What are the policy implications? 6. What are the strategic directions for the sector now? <p><i>Literature review</i> <i>Workshops</i> <i>Analysis and final report</i></p>
To identify the criteria for regulatory arrangements that would optimise the flexibility and efficiency of providers as well as robust and transparent accountability	<p><i>Literature review</i> <i>Workshops</i> <i>Analysis and final report</i></p>
To identify the aspects of the operations of UK and other international community housing regulatory systems that provide similar benefits to those being sought by the above stakeholders and to assess their applicability to the Australian context	<p><i>International literature review</i> <i>International interviews (mainly finance sector)</i> <i>Analysis and final report</i></p>
To familiarise administrators and providers with the findings and test their applicability in the existing community housing systems - including Indigenous housing	<p><i>Joint findings seminars</i></p>

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